

1 Department of Labor and Industry
2 Board of Personnel Appeals
3 PO Box 201503
4 Helena, MT 59620-1503
5 (406) 444-2718
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8 STATE OF MONTANA
9 BEFORE THE BOARD OF PERSONNEL APPEALS

10
11 IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 15-2011

12	CASCADE COUNTY,)	
13	Complainant,)	
14	-vs-)	INVESTIGATIVE REPORT
15)	AND
16	LABORERS' INTERNATIONAL UNION)	NOTICE OF INTENT TO DISMISS
17	OF NORTH AMERICA, LOCAL 1686,)	
18	Defendant,)	
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23 **I. Introduction**

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25 On February 1, 2011, Stacey Bird, Cascade County Human Resource Director, filed a
26 charge on behalf of Cascade County alleging that Laborers' International Union of North
27 America, Local 1686, hereinafter Local 1686 or Union, committed an unfair labor
28 practice by failing to negotiate in good faith, a violation of 39-31-402(2). Kim Rickard,
29 Local 1686 Business Manager/Secretary Treasurer filed an answer with the Board of
30 Personnel Appeals denying that the Union had committed an unfair labor practice.
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32
33 John Andrew was assigned by the Board to investigate the charge and has reviewed
34 the information submitted by the parties and communicated with them as necessary in
35 the course of the investigation.
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38 **II. Findings and Discussion**

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40 Cascade County is signatory to two labor agreements involving Local 1686. The first is
41 for employees of the State Fair/Expo Park. That contract is for the period July 1, 2010
42 through June 30, 2013. The contract provides:

43 DURATION This agreement shall continue in full force and effect until June 30,
44 2010, thereafter, the agreement shall be considered automatically renewed for
45 successive periods of twelve (12) months unless at least sixty (60) days prior to
46 June 30, 2013 or sixty (60) days prior to the end of any subsequent twelve (12)
47 months effective period either party shall serve written notices upon the other
48 that it desires cancellation, revision or modification of any provision or provisions
49 of this Agreement. In this event, the parties shall attempt to reach an agreement
50

1 with respect to the proposed change or changes, and at least forty-five (45) days
2 prior to the expiration date of the Agreement, meeting to consider such changes
3 be held by the parties.
4

5 The agreement further provides:
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7 **WAIVER AND AMENDMENT CLAUSE** No past practice, policies, or rules or
8 prior agreements shall alter the intent of meaning of the specific articles of this
9 Agreement. During the term of this Agreement and any extensions hereof no
10 collective bargaining shall be had upon any matter covered by this Agreement or
11 upon any matter which has been raised and disposed of during the course of the
12 collective bargaining which resulted in the consummation of this Agreement.
13 This clause shall not be construed to limit, impair or act as a waiver of the
14 COUNTY'S or UNION'S right to bargain collectively on changes which may
15 modify the basic terms and conditions herein set forth.
16

17 The second labor agreement is between the County and the Public Employees Craft
18 Council and is for the period July 1, 2008, through June 30, 2011. That contract
19 provides:
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21 **ARTICLE 20. Effective Date** This Agreement shall become effective July 1,
22 2008, and shall remain in full force and effect through June 30, 2011. This
23 contract shall remain effective yearly, thereafter, unless one of the parties hereto
24 shall serve notice, in writing, upon the other party hereto, not less than sixty (60)
25 days prior to it expiration date or any anniversary thereafter.
26

27 The agreement further provides:
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29 **Article 22. Amendment** This Agreement shall be subject to amendment at any
30 time by mutual consent of the parties hereto. Discussion will be limited to the
31 item or those items which are agreed upon to discuss before opening. Such
32 amendment shall be agreed to by both parties, reduced to writing, state effective
33 date of the amendment, and be executed in the same manner as this Agreement.
34

35 Each of the collective bargaining agreements provides for payment, in lieu of wages, to
36 the pension plan of the Laborers' International Union of North America National
37 (Industrial) Pension Fund. Cascade County has made payments to the pension plan on
38 behalf of the participating members in both bargaining units. Suffice to say, as with
39 most pension plans in recent times, the LIUNA fund is experiencing financial difficulties
40 the end result of which has been a Funding Rehabilitation Plan and a contribution
41 surcharge imposed by the pension fund on participating employers, including Cascade
42 County. Notice of the surcharge was provided to Cascade County in June of 2010. It is
43 this surcharge that is at the heart of the instant matter.
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45 The events leading to this charge are not in controversy, although the intention of the
46 parties is in dispute. On December 9, 2010, Ms. Bird wrote to Jay Reardon, Local 1686
47 Field Representative, "requesting to meet and negotiate the Funding Rehabilitation Plan
48 for the Laborer members under the ExpoPark Contract and the Craft Council Contract."
49 Follow up e-mails from Ms. Bird bearing her subject line "surcharge negotiations"
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1 ensued between Ms. Bird and Mr. Reardon culminating in an agreement to meet on
2 January 18, 2011. Additionally, it is clear in her January 4, 2011, e-mail to Mr. Reardon
3 that Ms. Bird intended the meeting to be to "negotiate the pension surcharge issue."
4

5 Cascade County and Local 1686 did meet on January 18, 2011, beginning at 11:00.
6 Present for the County were Ms. Bird, Linda Cargill (the note taker) and a supervisor
7 from Expo Park as well as a Craft Council supervisor. Jay Reardon and Brian Boland,
8 Local 1686 Field Representatives, were in attendance for the Union. No bargaining unit
9 members were at the meeting.
10

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12 In the unfair labor practice complaint, Ms. Bird acknowledges that Mr. Reardon
13 "informed us that he had not met with his members and was going to do so that day
14 [January 18]. We scheduled a second negotiation for 1/21/10 (sic) at 1:30 p.m.". Ms.
15 Bird also acknowledged to the investigator that had the Union notified her from the
16 beginning that they had no interest in opening either contract to negotiations she would
17 have accepted and understood that position, but as it were, the Union, in her view met
18 to negotiate on 1/18 and then agreed to a second negotiation on 1/21. Subsequently,
19 first by voice message on January 21, 2011, and by letter of the same date, Mr.
20 Reardon informed Ms. Bird that the Union did not wish to adopt the rehabilitation plan
21 and that the same could be discussed when the bargaining agreements opened for
22 negotiations in the normal course of bargaining. The contention of Ms. Bird is that by
23 meeting and then agreeing to meet again, and then not meeting, the Union was
24 bargaining in bad faith.
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26

27 Did Local 1686 enter into negotiations with the County when it met on January 18? The
28 evidence clearly points to the fact that Ms. Bird believes the union agreed to open the
29 contracts to bargain over the rehabilitation plan. However, by the very pleadings of the
30 County it is clear that Mr. Reardon had not even met with the bargaining unit. How
31 could he bargain if he did not know the will of the members? Moreover, if the intent of
32 the Union were to bargain, why were no bargaining unit members in attendance on
33 January 18? The logical inference is that the Union either did not intend to bargain or
34 the Union had not yet decided whether or not they would bargain. The latter is most
35 likely as based on the "bargaining notes" submitted by Ms. Bird, and although not all the
36 text is entirely legible, what is readily apparent is that Mr. Reardon was thinking that with
37 the contract up in July (at least one of them was) the time to negotiate would be in the
38 normal course of contract opening. It is equally clear in the "bargaining notes" that Mr.
39 Reardon was going to meet with the membership to discuss the situation. Obviously,
40 Mr. Reardon did meet with the membership and from that came his letter concluding "It
41 is the unions position that it's in our best interest to discuss this during negotiations for
42 new agreements between the Laborers' Union and Cascade County".
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45 Based on the above, and although the position of Ms. Bird is clearly understood by the
46 investigator, the County has not shown that the Union had an obligation to bargain over
47 the rehabilitation plan other than during a normal reopening. Furthermore the County
48 has not shown that the Union actually began to bargain over the rehabilitation plan and
49 thereafter refused to continue to bargain. Moreover, even if it were the case that the
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1 Union had commenced bargaining, Mr. Reardon's letter of January 31, 2011, could just
2 as easily be interpreted to mean that the Union had said a firm "no" to the "proposal"
3 offered by the County. Such a firm position – saying no – is not an unfair labor practice
4 on its own, and further given that the Union was under no demonstrated obligation to
5 bargain in the first place there simply is insufficient evidence to warrant a finding of
6 probable merit.
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8 **III. Recommended Order**

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10 It is hereby recommended that Unfair Labor Practice Charge 15-2011 be dismissed.
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13 DATED this 28th day of March 2011.
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19 BOARD OF PERSONNEL APPEALS
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22 By: _____
23 John Andrew
24 Investigator
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28 NOTICE

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30 Pursuant to 39-31-405 (2) MCA, if a finding of no probable merit is made by an agent of
31 the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss
32 may be appealed to the Board. The appeal must be in writing and must be made within
33 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the
34 Board at P.O. 201503, Helena, MT 59620-1503. If an appeal is not filed the decision to
35 dismiss becomes a final order of the Board.
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CERTIFICATE OF MAILING

I, _____, do hereby certify that a true and correct copy
of this document was mailed to the following on the _____ day of March 2011,
postage paid and addressed as follows:

STACEY BIRD HR DIRECTOR
CASCADE COUNTY
325 2ND AVE NORTH
GREAT FALLS MT 59401

KIM RICKARD BUSINESS MANAGER
LIUNA
PO BOX 1173
HELENA MT 59624